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[Proposed] Attorneys for the Official Committee of Equity
 Security Holders of USA Capital Diversified Trust Deed Fund,
 LLC

UNITED STATES BANKRUPTCY COURT
 DISTRICT OF NEVADA

In re:
 USA COMMERCIAL MORTGAGE COMPANY,
 Debtor.

In re:
 USA CAPITAL REALTY ADVISORS, LLC,
 Debtor.

In re:
 USA CAPITAL DIVERSIFIED TRUST DEED
 FUND, LLC,
 Debtor.

In re:
 USA CAPITAL FIRST TRUST DEED FUND, LLC,
 Debtor.

In re:
 USA SECURITIES, LLC,
 Debtor.

Affects:

- ☐ All Debtors
☐ USA Commercial Mortgage Company
☐ USA Securities, LLC
☐ USA Capital Realty Advisors, LLC
☒ USA Capital Diversified Trust Deed Fund, LLC
☐ USA First Trust Deed Fund, LLC

Case No. BK-S-06-10725 LBR
 Case No. BK-S-06-10726 LBR
 Case No. BK-S-06-10727 LBR
 Case No. BK-S-06-10728 LBR
 Case No. BK-S-06-10729 LBR

Chapter 11

Jointly Administered Under
 Case No. BK-S-06-10725-LBR

Date: June 21, 2006
 Time: 9:30 a.m.
 Place: Courtroom #2

**APPLICATION BY THE OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS
OF USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC TO EMPLOY ORRICK,
HERRINGTON & SUTCLIFFE LLP; DECLARATION OF MARC A. LEVINSON
TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

The Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC (the "Committee") appointed in the above-captioned bankruptcy case (the "Case"), respectfully requests that the Court approve, *nunc pro tunc* as of June 1, 2006, the employment of Orrick, Herrington & Sutcliffe LLP ("Orrick") as bankruptcy counsel for the Committee. In support of this Application, the Committee represents as follows:

I. BACKGROUND

1. On April 13, 2006 (the "Petition Date"), USA Capital Diversified Trust Deed Fund, LLC ("USA Diversified"), USA Commercial Mortgage Company ("USA Mortgage"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC ("USA Realty") and USA Capital First Trust Deed Fund, LLC ("USA First" and, collectively with USA Mortgage, USA Securities, USA Realty and USA Diversified, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code ("Bankruptcy Code").

2. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

3. On May 10, 2006, the Office of the United States Trustee (the "U.S. Trustee") appointed four separate committees in the Debtors' chapter 11 cases (collectively, the "Debtors' Cases"), including one in each of the USA Diversified, USA Securities and USA First cases (collectively, the "Investor Committees").

4. The members of the Investor Committees decided to engage Stutman, Triester & Glatt, P.C. ("ST&G") as their joint bankruptcy counsel. Before ST&G's employment application was presented to the Court for approval, however, the Investor Committee in the USA Securities Case decided to opt out of the joint representation and to select its own counsel. In addition, the U.S. Trustee objected to such joint representation. Thereafter, the USA First Committee sought to retain ST&G as its counsel, and the USA Securities Committee selected Gordon & Silver, Ltd., as its counsel.

(c) developing, through discussion with the Committee, its financial advisor, Beckley and other parties in interest, the Committee's legal positions and strategies with respect to all facets of the Debtors' Cases generally, and the Case in particular, including analyzing the Committee's position on administrative and operational issues; (d) preparing and responding to motions, applications, answers, orders, memoranda, reports and papers in connection with representing the interests of the Committee; (e) participating in the negotiations and resolution of issues related to financing and any plan of reorganization or plan of liquidation; and (f) rendering such other necessary advice and services that the Committee may require in connection with the Debtors' Cases.

11. Beckley will serve as local counsel, and will assist Orrick with respect to its representation, including matters set forth in this Application. Orrick and Beckley will coordinate responsibility for individual matters to minimize duplication.

12. Orrick's employment as bankruptcy counsel to the Committee does not include appearances before any court other than this Court and such courts as may hear appeals from this Court. Nor does it include any appearances before any agency other than the U.S. Trustee. Nor will Orrick provide advice on issues of Nevada law.

13. Orrick will represent only the Committee, and not any of its respective individual members. Nor will it represent any other investors of the Debtors.

V. COMPENSATION ARRANGEMENTS

14. No payments have been made or promised to Orrick for services rendered in any capacity whatsoever in connection with the Case. Subject to the Court's approval, Orrick will charge the USA Diversified estate for its services to the Committee in accordance with its standard hourly rates in effect at the time services are rendered.¹ A list of such rates as of June 1, 2006 is attached as Exhibit "2" to the Levinson Declaration. Orrick acknowledges that the approval of this Application does not indicate Court approval of such rates. There is no

¹ The Committee and Orrick reserve the right to seek compensation in other of the Debtors' bankruptcy cases pursuant to Sections 503(b)(3) and (4) of the Bankruptcy Code.

1 agreement or understanding between Orrick or any other entity for the sharing of compensation
2 to be received for services rendered in or in connection with the Case. No compensation will be
3 paid to Orrick except as authorized by order of this Court, after notice and an opportunity for a
4 hearing.

5 VI. ORRICK IS DISINTERESTED

6 15. To the best of Orrick's knowledge, based upon and subject to the disclosures in
7 the Levinson Declaration, Orrick and all of the attorneys comprising or employed by it are
8 disinterested persons who do not hold or represent an interest adverse to the USA Diversified
9 estate and do not have any connection with any of USA Diversified, its creditors, any other party
10 in interest in the Case, the U.S. Trustee or any other person employed in the Office of the U.S.
11 Trustee.

12 16. Orrick has no interest materially adverse to the interest of the USA Diversified
13 estate or of any member of the Committee, by reason of any direct or indirect relationship to,
14 connection with, or interest in, any of the Debtors, any member of any of the Committee, or an
15 investment banker for any security of the Debtors or for any other reason.²

16 17. From time to time, Orrick may be engaged by one or more of the Debtors'
17 creditors and/or investors in matters entirely unrelated to the Debtors. For example, Orrick
18 represents Bank of America, U.S. Bank and Citibank, creditors of Debtors other than USA
19 Diversified, in matters unrelated to the Debtors.

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² The Committee has selected FTI Consulting ("FTI") to be its financial advisor. An FTI senior managing
24 director serving as a chapter 7 trustee of a law firm in a bankruptcy case in San Francisco has retained
25 FTI as his financial advisor, and has made claims against Orrick and other law firms relating to income
26 produced by former partners of the bankrupt law firm since they joined Orrick and the other firms. No
27 litigation has been commenced. In addition, Lewis & Roca, counsel to the committee in the U.S.
28 Mortgage case, is and has been a client of Bond Logistix, LLC, a wholly-owned subsidiary of Orrick,
that performs arbitrage rebate calculations with respect to certain tax exempt bonds pursuant to Section
148 of the Internal Revenue Code. None of the Bond Logistix work is in any way connected to the
Debtors' Cases.

DECLARATION OF MARC A. LEVINSON

I, Marc A. Levinson, hereby declare under penalty of perjury that:

1. I am over eighteen years of age and have personal knowledge of the facts set forth herein, and if called as a witness, would testify competently with respect thereto from my own personal knowledge except as otherwise stated.

2. I am a partner of Orrick, Herrington & Sutcliffe LLP ("Orrick"). This declaration is submitted pursuant to Bankruptcy Rule 2014(a) in support of the "Application by the Official Committee of Equity Security Holders of USA Capital Diversified Trust Deed Fund, LLC, to Employ Orrick, Herrington & Sutcliffe LLP" (the "Application" filed by the "Committee").¹

3. The Committee desires to employ Marc A. Levinson, Lynn Trinka Ernce, Jeffery D. Hermann, Kimberly E. Neureiter and other Orrick partners, associates and attorneys of counsel as bankruptcy counsel to the Committee. A summary of the experience and qualifications of those Orrick attorneys expected to render services to the Committee is attached as Exhibit "1" to this Declaration. All attorneys who will be appearing in this Court have filed and/or will file verified petitions to practice before this Court in connection with the Debtors' Cases, *pro hac vice*. As Orrick learns more about the Debtors' Cases and as such cases develop, it is likely that additional Orrick lawyers will become involved. Any lawyers who will be appearing in this Court will file *pro hac vice* applications.

4. The Committee has decided to employ Orrick as its bankruptcy counsel and Beckley as its local bankruptcy counsel to represent the Committee's interests in connection with the Debtors' Cases.

5. With respect to representing the Committee, Orrick will be responsible for (a) protecting and preserving the collective interests of the equity security holders of the USA Diversified as a class; (b) advising the Committee on the requirements of the Bankruptcy Code and the Bankruptcy Rules as they pertain to the interests of the Committee and its constituents; (c) developing, through discussion with the Committee, its financial advisor, Beckley and other

¹ Terms not otherwise defined herein shall have the same meaning ascribed to them in the Application.

1 parties in interest, the Committee's legal positions and strategies with respect to all facets of the
2 Debtors' Cases generally, and the Case in particular, including analyzing the Committee's
3 position on administrative and operational issues; (d) preparing and responding to motions,
4 applications, answers, orders, memoranda, reports and papers in connection with representing the
5 interests of the Committee; (e) participating in the negotiations and resolution of issues related to
6 financing and any plan of reorganization or plan of liquidation; and (f) rendering such other
7 necessary advice and services that the Committee may require in connection with the Debtors'
8 Cases.

9 6. As noted above, Beckley will serve as local counsel, and will assist Orrick with
10 respect to its representation, including matters set forth in the Application. Orrick and Beckley
11 will coordinate responsibility for individual matters to minimize duplication.

12 7. Orrick's employment as bankruptcy counsel to the Committee does not include
13 appearances before any court other than this Court and such courts as may hear appeals from this
14 Court. Nor does it include any appearances before any agency other than the U.S. Trustee.
15 Orrick will not provide advice on issues of Nevada law.

16 8. Orrick will represent only the Committee, and not any of its respective individual
17 members. It will not represent any other investors of the Debtors.

18 9. No payments have been made or promised to Orrick for services rendered in any
19 capacity whatsoever in connection with the case. Subject to the Court's approval, Orrick will
20 charge the USA Diversified estate for its services to the Committee in accordance with its
21 standard hourly rates in effect at the time services are rendered. A list of such rates for the
22 lawyers expected to work on the Case is attached hereto as Exhibit "2." There is no agreement
23 or understanding between Orrick and any other entity (including Beckley) for the sharing of
24 compensation to be received for services rendered in or in connection with the Case.

25 10. No compensation will be paid to Orrick except as authorized by order of this
26 Court.

27 11. Based on the conflict searches conducted by Orrick, I believe that all of the
28 attorneys comprising or employed by Orrick are disinterested persons who do not hold or

1 represent an interest adverse to the USA Diversified estate. Orrick and its attorneys do not have
2 any connection with any of the Debtors, their creditors, any of the Investor Committees, any other
3 party in interest in the Debtors' Cases, their respective attorneys or accountants, the U.S. Trustee,
4 or any person employed in the office of the U.S. Trustee.

5 12. Orrick has no interest materially adverse to the interest of the USA Diversified
6 estate, of any member of the Committee, or of any class of creditors or equity security holders of
7 the USA Diversified estate, by reason of any direct or indirect relationship to, connection with, or
8 interest in, USA Diversified (or any other Debtor), any member of the Committee, or an
9 investment banker for any security of the Debtors or member of the Committee, or for any other
10 reason. Orrick does represent parties that are creditors of one or more of the other Debtors in
11 matters entirely unrelated to the Debtors' chapter 11 cases. For example, Orrick represents and
12 has represented unsecured creditors of USA Mortgage, namely Bank of America, U.S. Bank and
13 Citibank. Such representations are unrelated to the Debtors and the Debtors' Cases. In addition,
14 the Committee has selected FTI Consulting ("FTI") to be its financial advisor. An FTI senior
15 managing director serving as a chapter 7 trustee of a law firm in a bankruptcy case in San
16 Francisco has retained FTI as his financial advisor, and has made claims against Orrick and other
17 law firms relating to income produced by former partners of the bankrupt law firm since they
18 joined Orrick and the other firms. No litigation has been commenced. I apprised the members of
19 the Committee of the foregoing both in writing and orally prior to the Committee's selection of
20 FTI. In addition, Lewis & Roca, counsel to the committee in the U.S. Mortgage case, is and has
21 been a client of Bond Logistix, LLC, a wholly-owned subsidiary of Orrick, that performs
22 arbitrage rebate calculations with respect to certain tax exempt bonds pursuant to Section 148 of
23 the Internal Revenue Code. None of the Bond Logistix work is in any way connected to the
24 Debtors' Cases.

25 13. I am the Orrick partner who will bear primary responsibility for supervising the
26 representation of the Committee. I have read and am generally familiar with the Bankruptcy
27 Code, the Bankruptcy Rules, and the local rules of this Court. The Orrick lawyers working on the
28 Case also are familiar with Bankruptcy Code and the Bankruptcy Rules, and will review the local

1 rules of this Court before seeking admission *pro hac vice*. The Orrick attorneys working on this
2 matter will conduct themselves in accordance with the local rules and procedures of this Court.

3 14. I believe that Orrick is competent to represent the interests of the Committee as its
4 bankruptcy counsel.

5 Executed at Sacramento, California, this 12th day of June, 2006.

6 I declare under penalty of perjury that the foregoing is true and correct to the best of my
7 knowledge, information and belief.

8 /s/ Marc A. Levinson

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10 Marc A. Levinson
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EXHIBIT 1**BIOGRAPHIES OF MEMBERS OF
ORRICK, HERRINGTON & SUTCLIFFE LLP
EXPECTED TO RENDER SERVICES**

MARC A. LEVINSON, born Brooklyn, New York, August 12, 1948; admitted to bar 1973, California. Education: University of California at Los Angeles (B.A., 1970); University of California at Davis (J.D., Order of the Coif, 1973); Editor-in-Chief, U.C. Davis Law Review, 1972-1973. Clerkships: Chief Justice Donald R. Wright, California Supreme Court, 1973-1974; and The Honorable William H. Orrick, Jr., United States District Court for the Northern District of California, 1974-1975. *Member*: National Bankruptcy Conference; American College of Bankruptcy (9th Circuit Regent since 2004); California Bankruptcy Forum (Former President); Sacramento Valley Bankruptcy Forum (Former President).

JEFFERY D. HERMANN, born Bloomington, Indiana, October 11, 1952; admitted to bar, 1977, Hawaii; 1979, California. Education: University of Hawaii College of Engineering (B.S., 1974); William S. Richardson School of Law, University of Hawaii at Manoa (J.D., 1977). Clerkship: The Honorable Martin Pence, United States District Court for the District of Hawaii, 1977-1979. *Member*: Financial Lawyers Conference (26 years).

LYNN TRINKA ERNCE, born Des Plaines, Illinois, September 7, 1966; admitted to bar, 1995, California. Education: University of Hawaii at Manoa (B.B.A., 1988); University of the Pacific, McGeorge School of Law (J.D., with distinction, 1995); Traynor Honor Society; Staff Writer and Assistant Comment Editor, Pacific Law Journal, 1993-1995. Externship: The Honorable David E. Russell, United States Bankruptcy Court for the Eastern District of California, Fall 1995. *Member*: Eastern District of California (Ninth Circuit Lawyer Representative, 2006-); Federal Bar Association (Executive Committee, Sacramento Chapter, 2006-); Sacramento County Bar Association (Former President, Bankruptcy and Commercial Law Section); California State Bar (Member, Insolvency Law Committee, 2001-2004).

KIMBERLY E. NEUREITER, born Great Lakes, Illinois, October 27, 1970; admitted to bar, 2002, Maryland; 2006 District of Columbia. Education: Smith College (B.A., 1992); University of Maryland University College (B.A., 1999); University of Baltimore (J.D., 2002); Staff Editor, University of Baltimore Law Forum, (2001-2002). Author: "Ametek v. O'Connor: Employer and Insurer and Entitled to a Credit for the Number of Weeks Benefits Were Paid When a Workers' Compensation Award in Increased on Judicial Review," 32.1 U. Balt. L. F. 37 (2002). Clerkship: The Honorable Paul Mannes, United States Bankruptcy Court for the District of Maryland, (2002-2003). Externship: The Honorable Duncan W. Keir, United States Bankruptcy Court for the District of Maryland (2002). *Member*: Maryland Bankruptcy Bar Association (Chair, Young Lawyers' Group 2004-); American Bar Association (2002-).

EXHIBIT 2**ORRICK, HERRINGTON & SUTCLIFFE LLP
RANGES OF HOURLY RATES****Professional** **Rates Effective 6/1/2006**

Partners/Of Counsel \$495 – \$755

Associates \$235 – \$490

Law Clerks \$225

Paralegals \$50 – \$290

**Attorneys Expected to be
Most Active in this Case**

Marc A. Levinson \$560

Jeffery D. Hermann \$570

Lynn Trinka Ernce \$465

Kimberly E. Neureiter \$375

**Legal Assistants Expected to be
Most Active in this Case**

Linda Partmann \$160

Shelley White \$185